

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case Number: 18-20495
Honorable David M. Lawson

v.

IBRAHEEM IZZY MSUAIBLI,

Defendant,

**ORDER DENYING WITHOUT PREJUDICE GOVERNMENT'S
MOTION TO DESIGNATE CLASSIFIED INFORMATION SECURITY OFFICER**

The government has moved to designate certain individuals as Classified Information Security Officers (CISO) in this case.

The defendant is charged in an indictment with providing and attempting to provide material support to a designated terrorist organization, contrary to 18 U.S.C. § 2339B. The Court held an initial pretrial conference with counsel for the parties on August 8, 2018, as contemplated by section 2 of the Classified Information Procedures Act (CIPA), 18 U.S.C., App. III, § 2. At the conference, the government informed the Court and the defendant that the discovery materials and evidence in the case may involve classified information.

In support of its request for a CISO designation, the government references section 2 of the Revised Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025 (“Rev. Pro.”). Those rules were established at the direction of Congress. *See* 18 U.S.C., App. III, § 9(a). Section 2 states that “[i]n any proceeding in a criminal case or appeal therefrom in which classified information is within, or is reasonably expected to be within, the custody of the court, the court

will designate a” CISO. However, the government has not complied with the procedures prescribed for establishing that officer.

As the Revised Procedures explain,

The Attorney General or the Department of Justice Security Officer will recommend to the court a person qualified to serve as a classified information security officer. This individual will be selected from the Litigation Security Group, Security and Emergency Planning Staff, Department of Justice, to be detailed to the court to serve in a neutral capacity.

Rev. Pro. § 2. The Court has not received a recommendation for a CISO from the Attorney General or the Department of Justice Security Officer.

The Revised Procedures also require the government to inform the Court of the proposed CISO’s qualifications. Section 2 states:

The classified information security officer must be an individual with demonstrated competence in security matters. Prior to designation, the Department of Justice Security Officer must certify in writing that the classified information security officer is properly cleared, i.e., possesses the necessary clearance for the level and category of classified information involved.

Ibid. Although the government has identified certain nominees as CSIOs and alternates, the DOJ Security Officer has not furnished any certifications relating to the competence or qualifications of the government’s nominees. The government will be directed to comply promptly with these requirements.

Accordingly, it is **ORDERED** that the government’s motion to designate a classified information security officer (ECF No. 24) is **DENIED** without prejudice.

It is further **ORDERED** that **on or before October 16, 2018**, the government must cause the Attorney General or the Department of Justice Security Officer to recommend to the court a person qualified to serve as a classified information security officer in accordance with the procedures established by section 2 of the Revised Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: October 2, 2018

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on October 2, 2018.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI